

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes, 1997

Docket No. R97-1

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**NEWSPAPER ASSOCIATION OF AMERICA
MOTION TO COMPEL ADMISSION FROM THE
UNITED STATES POSTAL SERVICE**

March 11, 1998

Pursuant to section 3001.21 (Rule 21) of the Commission's Rules of Practice and Procedure and Special Rule of Practice 2B, the Newspaper Association of America ("NAA") hereby submits a Motion to Compel Admission From the United States Postal Service. Specifically, NAA requests the Presiding Officer to compel the Postal Service to admit the existence of a newly discovered document entitled "United States Postal Service 1998 Marketing Plans" ("USPS Marketing Document") so as to authenticate the document. For convenience, NAA is filing concurrently a copy of the USPS Marketing Document as Library Reference NAA/R97-1 LR 2. In order to simplify matters, NAA requests the Presiding Officer to compel only the first admission (NAA/USPS RFA-1) of NAA's February 17, 1998, Request For Admissions From the United States Postal Service ("RFA"), as modified herein.

I. BACKGROUND

On August 29, 1997, NAA submitted an initial set of 15 institutional interrogatories to the Postal Service, including the following:

NAA/USPS-10. Please refer to page 2 of the *1996 Annual Report of the United States Postal Service*. The first paragraph of the Letter from the CEO states:

"The Postal Service faces a daily struggle with formidable competitors, high-tech alternatives and changing customer needs. To deliver

messages, *gain market share* and earn the opportunity to serve the communication needs of our nation, we recognize that we must win our customers' business to stay in business." (emphasis added)

- a. Is gaining market share one of the Postal Services corporate goals?
- b. Does the Postal Service have any measures of its market share in any of its key lines of business? If so, please provide these measures and indicate the source of the data.
- c. Did the Postal Service gain market share in 1996 in any of its key lines of business? If so, please indicate the amount of the gain.
- d. Is it possible for a firm regularly and steadily to report record volumes, revenues, and profits each year, and yet "lose" market share?

The Postal Service apparently never responded to NAA/USPS-10 either by objection or answer.¹

In February 1998, NAA discovered through other means the existence of the USPS Marketing Document. On February 17, 1998, NAA submitted its RFA requesting that the Postal Service admit the existence of the USPS Marketing Document and the existence of certain passages in that document that describe the Postal Service's expressed intent to gain market share by diverting substantial advertising (and its corresponding revenue) from newspapers to commercial mail.

Instead of simply admitting the existence of the USPS Marketing Document and its relevant passages, the Postal Service on February 27, 1998, filed an Objection Of United States Postal Service To Request For Admissions Of The Newspaper Association Of America (NAA/USPS-RFA-1-6) ("Objection"). In the Objection, the

¹ A search at the Commission's docket room was unable to find a copy of an answer or objection. Counsel's office spoke by telephone with USPS counsel regarding the status of this answer during the week of March 2. USPS counsel undertook to determine the whereabouts of that answer. As of the date of this filing, counsel had not been advised of the outcome of that search.

Postal Service objected to all six requested admissions and claimed that the RFA was untimely filed because it does not qualify as follow-up nor as discovery under Special Rule 2E.

II. ARGUMENT

According to Commission Rule 27(c), the bases for a party's objections to requests for admissions must "be clearly and full stated." The Postal Service objects to the RFA only on the grounds of timeliness. Objection at 1. The Postal Service makes no claim of privilege, undue burden or irrelevance. Therefore, the Presiding Officer must presume that the admissions are relevant (and indeed they obviously are), unprivileged and would not unduly burden the Postal Service. The RFA also is timely. Thus, the Presiding Officer should compel the Postal Service's admission.

The Postal Service misunderstands the intent and purpose of the RFA and misapplies Commission precedent. The RFA is timely because it was filed prior to the close of the evidentiary record. Pursuant to Rule 27, any participant may make a request for admission of "relevant, unprivileged facts, including the genuineness of any documents. . . ." NAA has done just that -- it has made a request for admission of the genuineness of a Postal Service document that has direct relevance to this proceeding. Indeed, the passages that were the subject of the RFA, if properly authenticated, would shed substantial light on much of the testimony provided and rates proposed in this proceeding by the Postal Service - testimony and rates that NAA believes are unreasonably skewed in favor of certain segments of Standard (A) advertising mail.

In its Objection, the Postal Service cites a number of inapplicable rulings involving motions to compel responses to interrogatories.² However, as the Postal Service correctly ascertains, NAA is not requesting discovery of a document nor is NAA seeking answers to interrogatories. NAA requests the Postal Service to admit the existence and authenticity of the USPS Marketing Document already in NAA's possession. While conceivably there might be good reason not to force a party to take the time to respond to interrogatories late in the procedural schedule, no such rationale applies here. Indeed, it is not even self-evident that Special Rule 2E's deadline even applies to a request for admission as to the authenticity of a document. The rule only states that section 27 allows discovery "with no time limitations" and that "[g]enerally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case" (emphasis added). NAA submits that a request for admission as to the genuineness of a document that is plainly relevant to the issues in this case is not cut off by Special Rule 2E. Thus, NAA's RFA is timely.

Second, it is disingenuous for the Postal Service to argue that NAA should earlier have sought an admission as to the genuineness of the USPS Marketing Document. NAA, of course, did not have the document until shortly before filing the RFAs.

Moreover, in one of the rulings relied upon by the Postal Service, P.O. Ruling No. MC96-3/21, the Presiding Officer determined that a similar objection of untimeliness by the Postal Service to an OCA motion to compel did not change the fact that "the

² The Postal Service cited a number of Commission rulings, including rulings from Docket No. R87-1. NAA could not obtain copies of these earlier rulings from the Commission as they reportedly are no longer kept in the Commission docket room.

Postal Service has not met its obligation to fully respond to [an earlier] interrogatory."

Id. at 3. The Presiding Officer then proceeded to order the Postal Service to provide OCA "as much information as it can reasonably obtain" to satisfy the Postal Service's obligation to fully respond. *Id.* at 4-5. Similarly, over six months ago, NAA requested the Postal Service to disclose its goals and "progress" toward gaining market share in key lines of business. See NAA/USPS-10. As demonstrated below, the USPS Marketing Document contains information directly responsive to NAA/USPS-10:

NAA/USPS-10a. Is gaining market share one of the Postal Services corporate goals?

Vision, Goals and Objectives

Ad Mail Vision

USPS Ad Mail Service will make direct mail the advertising medium of choice overtaking both newspaper and TV advertising by 2005.

What must happen:

Market share increase of three points

. . . .

Our goals, objectives and priorities for Ad Mail in 1998 are geared toward maintaining our share position in terms of total advertising expenditures, with the intent to grow share in the years 1999 through 2005. . . .

USPS Marketing Document at AD26 (emphasis in original).

NAA/USPS-10b Does the Postal Service have any measures of its market share in any of its key lines of business? If so, please provide these measures and indicate the source of the data.

Advertising mail is the number three advertising medium in the US in terms of total dollars spent on advertising. In 1996, Ad Mail held 20 percent of the market, behind newspapers with 22 percent, and TV with 23 percent.

USPS Marketing Document at AD8.

NAA/USPS-10c. Did the Postal Service gain market share in 1996 in any of its key lines of business? If so, please indicate the amount of the gain.

Exhibit AD 11-Advertising Expenditures By Media, 1993-1997 (\$ billions)

Media	1993	1994	1995	1996	1997 (est.)
TV	\$32	\$35	\$37	\$42	\$42
Newspapers	\$32	\$35	\$36	\$38	\$41
Ad Mail	\$27	\$30	\$33	\$35	\$37
Magazines	\$7	\$8	\$9	\$9	\$10
Radio	\$9	\$10	\$11	\$12	\$13
All Other	\$31	\$33	\$37	\$39	\$43
TOTAL	\$139	\$152	\$163	\$175	\$186

Source: McCann Erickson

USPS Marketing Document at AD11.

NAA has been unable to determine whether the Postal Service ever responded to NAA/USPS-10 at all.³ If it did, then it would have been under a continuing duty to supplement its response pursuant to Commission Rule 25(e). If it did not, and NAA is unaware of the USPS having filed or served a timely objection, then the USPS is at fault for failing to respond to an interrogatory. At the very least, the Postal Service should have forthrightly explained its intention to divert pre-printed advertising from newspapers to advertising mail and disclosed the USPS Marketing Document. The

³ Unfortunately, in the rush of this docket's procedural schedule, NAA did not recognize until recently the Postal Service's lack of response to NAA/USPS-10.

Presiding Officer should not reward the Postal Service for this state of affairs, but should compel the Postal Service to authenticate the USPS Marketing Document.

Finally, even if the Presiding Officer determines that the RFA is not technically timely, it would be manifestly unjust to permit the Postal Service to withhold key information in its possession that would shed light on the Postal Service's motivation in proposing rates that favor certain segments of advertising mail, and allow the Postal Service to claim that a request for admission concerning the genuineness of a document that the Postal Service should have provided six months ago was untimely.

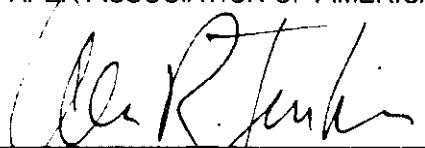
III. CONCLUSION

For all these reasons, the Presiding Officer should compel the Postal Service to admit the authenticity of the USPS Marketing Document, attached hereto as Library Reference NAA/R97-1 LR 2, as requested in NAA RFA No. 1, as modified herein.

Respectfully submitted,

NEWSPAPER ASSOCIATION OF AMERICA

By:


William B. Baker
Alan R. Jenkins

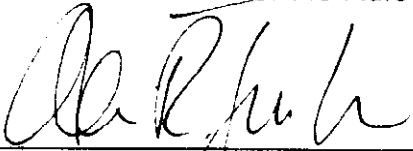
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the instant document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

March 11, 1998

A handwritten signature in cursive script, appearing to read "Alan R. Jenkins", written over a horizontal line.

Alan R. Jenkins